

AG Contract No : KR05-0113TRN
ADOT ECS File No : JPA 04-066
TRACS: SL 518 01C
Project No :
Section: E. Main Canal
from 32nd to 40th Streets
Budget Source Item No : 75305

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF YUMA

THIS AGREEMENT is entered into to date 27th of April 2005, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF YUMA, acting by and through its MAYOR and CITY COUNCIL, (the "City").

I. RECITALS

1 The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement category.

4. Such project lies within the boundary of the City and has been selected by the City; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.

5. The City, in order to obtain Federal funds for the construction of the project, is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City, State and FHWA, including actual construction engineering (CE) and administration costs.

NO. 27485
Filed with the Secretary of State
Date Filed: 04/27/05

Janice K. Brewer
Secretary of State

By: Jimmy D. Graessle

6. The interest of the State for this Project is in the acquisition of Federal funds for the use and benefit of the City. Funds expended for the Project, are authorized by reason of federal law and regulations. The City will design and construct a Multi-use pathway 1.06 miles from 32nd Street to 40th Street herein after referred to as the "Project". The construction of this Multi-use pathway is a continuation of an already exiting Multi-use pathway 3 miles along the E. Main Canal. The Project will also include pedestrian lighting, landscaping and associated irrigation system.

Construction Tracs No.: SL518 01C

Estimated Federal Aid Funds	\$500,000.00
Estimated City Funds	<u>\$370,000.00</u>

****Total Estimated Cost of the Project*** ***\$870,000.00***

*(Includes construction, construction engineering administration, and incidentals)

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The City Will:

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction. Incorporated or resolve State's review comments.

b. With the aid and consent of the FHWA and the State using Arizona Procurement Procedures, proceed to advertise for, receive and open bids, subject to the concurrence of the FHWA and the State. Enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications at the lowest bid price

c. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the City for the Project. Construction administration costs not participated in by FHWA shall be borne by the City

d. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and federal government

e. After the award of the construction contract(s), invoice the State for the progress payments for the direct cost of construction and construction administration costs, not to exceed the estimated cost of \$500,000.00 of Federal funds addressed under this Agreement. The City is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by federal funding or not.

f. Provide electrical power, water connections and landscape maintenance, during and after the construction phase, all at the City's expense.

g. Upon completion of the Project, provide for at its own cost and as an annual item in its budget, perpetual and proper maintenance to the Multi-use pathway and all enhancement improvements, including but not limited to, electrical power, water, and landscape care.

2. The State Will:

a. Agree to be the City's authorized agent for the Project and submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Approve the Project, if such project construction funds are available by FHWA and request the authorized Federal funds available including design, construction engineering and administration costs. The State and FHWA have approved the City to self-administer the Project

c. Upon execution of this Agreement, make payments to the City for the direct actual cost of the construction of the Project, plus construction engineering, within thirty-days (30) after receipt and approval of an invoice

d. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans and specifications, reports and the engineering in connection therewith, the construction of the improvements contemplated, cost over-runs and construction claims. The City will require its contractor(s) to name the State and ADOT as an additional insured in the contractor(s) insurance policies. The City will also require its contractors to name the State and ADOT as an additional indemnitee in the City's contracts with its contractor(s). It is understood and agreed that State's participation is confined to securing Federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that, to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees, shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion described or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

3. This Agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this Agreement for electrical power, water, and maintenance shall be perpetual, unless assumed by another governmental entity.

4. This Agreement shall become effective upon filing with the Secretary of State

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes Sections 38-511

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Sections 12-1518

7. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract

8. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination"

9. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

10. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

11. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007 FAX (602) 712-7424

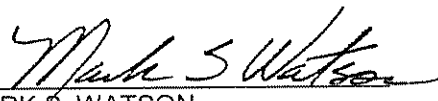
City Administrator
City of Yuma
P.O. Box 13014
Yuma, Az 85366-3014

12. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written

THE CITY YUMA

By


MARK S. WATSON
City Administrator

STATE OF ARIZONA

Department of Transportation

By

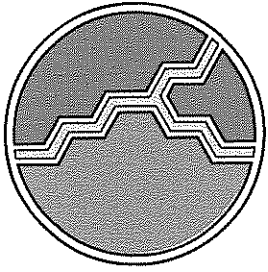

SUSAN TELLEZ
Contract Administrator

ATTEST

By


BRIGITTA M. KUIPER
City Clerk

31 January 2005-ly



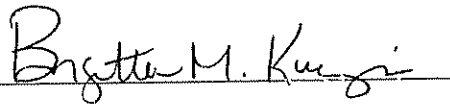
City of YUMA

**Office of the
City Clerk**

One City Plaza
P.O. Box 13012
Yuma, Arizona 85366-3012
(928) 373-5035
FAX (928) 373-5036
TTY (928) 373-5149

CERTIFICATION

I, Brigitta M. Kuiper, do hereby certify that I am the duly appointed City Clerk of the City of Yuma, Arizona, and that the attached Resolution, R2005-10, is a true and correct copy of the resolution on file in the Office of the City Clerk.


Brigitta M. Kuiper, City Clerk

2/23/05
Date

RESOLUTION NO. R2005-10

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA,
ARIZONA, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF YUMA AND THE STATE OF ARIZONA, TO
PROVIDE FEDERAL FUNDING FOR EAST MAIN CANAL PATHWAY
IMPROVEMENTS, FROM 32nd STREET TO 40th STREET**

WHEREAS, the City of Yuma (City) desires to construct the East Main Canal Pathway, between 32nd Street and 40th Street; and,

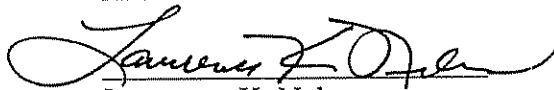
WHEREAS, the State of Arizona (State) has agreed to provide federal funding for the project through a transportation enhancement grant; and

WHEREAS, the State and the City wish to enter into an Intergovernmental Agreement allocating federal funds to the City, to complete the East Main Canal Pathway project, between 32nd Street and 40th Street, in accordance with the approved plans and specifications.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma, Arizona, that the City Administrator is authorized and directed to execute an Intergovernmental Agreement with the State of Arizona, as shown in Exhibit A, attached hereto and by this reference made a part hereof, to provide federal funding for the said East Main Canal Pathway project.

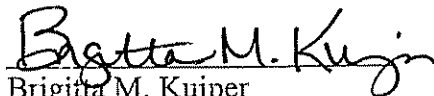
Passed and adopted this 16th day of February, 2005.

APPROVED:



Lawrence K. Nelson
Mayor

ATTESTED:



Brigitta M. Kuiper
City Clerk

APPROVED AS TO FORM:



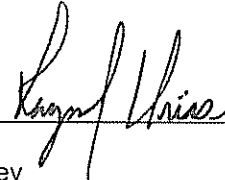
Steven W. Moore
City Attorney

ATTORNEY APPROVAL FORM

FOR THE CITY OF YUMA

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF YUMA, an agreement among public agencies, which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declares this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 17 day of February, 2005.



Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

TERRY GODDARD
ATTORNEY GENERAL

INTERAGENCY SERVICE AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0113TRN (**JPA 04-066**), an Agreement between public agencies, i.e., The State of Arizona and The City of Yuma, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: April 21, 2005

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis", written over a horizontal line.

Susan E. Davis
Assistant Attorney General
Transportation Section

SED:mjf
Attachment
901774